

**Indiana Department of State Revenue**  
**Revenue Ruling #2004-02ST**  
**November 3, 2004**

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**ISSUE**

Sales and Use Tax- Sale of Gasoline from a Metered Pump

Authority: IC 6-2.5-7-2, IC 6-2.5-7-3.

The taxpayer requests the department to rule on whether or not its proposed operating procedures comply with Indiana law.

**STATEMENT OF FACTS**

The taxpayer is a limited partnership. It has entered into agreements with retailers in Indiana to enable its customers access to retailers' sites. This access would allow said customers to use its cards. The taxpayer would take possession of the fuel purchased at the nozzle and would reimburse the retailer the following per gallon:

- Average oil price information service ("OPIS") daily price
- Posted freight allowance
- Commission
- Federal government excise tax/gallon

1. Diesel	.244
2. Kerosene	.244
3. Gasoline	.184
4. Gasohol	.132

- Indiana State Excise Tax/gallon

1. Diesel	.160
2. Kerosene	.160
3. Gasoline	.180
4. Gasohol	.180

- Indiana state oil inspection fee

- |             |      |
|-------------|------|
| 1. Gasoline | .008 |
| 2. Gasohol  | .008 |

- No prepaid sales tax or sales tax is reimbursed because this is an interstate transaction.

The taxpayer would bill the customers a weekly price based on OPIS weekly average plus a margin including all taxes unless exempt. The taxpayer would remit sales tax to Indiana based on what the customer was billed; the final retail price.

The taxpayer would pay Indiana the final sales tax due on the above described sales after taking credit for any legitimate sales tax-exempt sales made to agriculture customers, state and local governments, the federal government, non-profit organizations, parochial and public schools, and public transportation customers.

The taxpayer would continue to make reimbursements to the “retailer” as mentioned above with the understanding that they will have reported the related transactions as “sales for resale”; a non-sales taxable transaction. The taxpayer would pay the full sales tax to the state of Indiana.

### **DISCUSSION**

IC 6-2.5-7-2 provides as follows:

Except as provided in section 2.5 of this chapter, a retail merchant who uses a metered pump to dispense gasoline or special fuel shall display on the pump the total price per unit of the gasoline or special fuel. Subject to the provisions of section 2.5 of this chapter; a retail merchant may not advertise the gasoline or special fuel at a price that is different than the price that he is required to display on the metered pump.

IC 6-2.5-7-3 provides as follows:

(a) With respect to the sale of gasoline which is dispensed from a metered pump, a retail merchant shall collect, for each unit of gasoline sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$.001), of:

- (i) the price per unit before the addition of state and federal taxes; multiplied by
- (ii) six percent (6%). The retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

(b) With respect to the sale of special fuel or kerosene which is dispensed from a metered pump, unless the purchaser provides an exemption certificate in accordance with IC 6-2.5-8-8, a retail merchant shall collect, for each unit of

special fuel or kerosene sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$.001), of:

- (i) the price per unit before the addition of state and federal taxes; multiplied by
- (ii) six percent (6%).

Unless the exemption certificate is provided, the retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

The law clearly requires that the metered pump display the total price of the gasoline or special fuel. All sales tax collected and remitted from a particular metered pump must correspond to the amount stated as the sales price on the pump. The taxpayer's proposed method of operation would require that its customers take delivery of gasoline and other fuels from the same metered pumps that the retail merchants use to make other sales. The taxpayer's customers could pay a different amount for the gasoline or special fuel than other persons receiving fuel from the metered pump. Therefore, the taxpayer's proposed method of operation does not comply with Indiana's sales tax law.

The law also requires the retail merchant to collect and remit the sales tax unless an exemption certificate is provided. The taxpayer's proposed method of operations would have the taxpayer collecting and remitting the sales tax instead of the retail merchant. This also contradicts the clear requirements of the law.

### **RULING**

The Department rules that the taxpayer's proposed method of operations does not comply with the Indiana law.

### **CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

Indiana Department of State Revenue.